FILED Gregory F. Buhyoff 1 Nevada Bar No. 7627 2 Law Office of Gregory F. Buhyoff, P.C. JAN 2 1 2003 1635 Village Center Circle, Suite 140 3 Las Vegas, NV 89134-6375 CLERK, U.S. DISTRICT COURT 4 (702) 804-6154 Telephone DISTRICT OF NEVADA (702) 804-6748 Facsimile 5 DEPUTY Attorneys for Defendants 6 7 UNITED STATES DISTRICT COURT 8 DISTRICT OF NEVADA 9 10 CAESARS WORLD, INC. and PARK PLACE ENTERTAINMENT 11 Case No. CV-S-02-1287-RLH-RJJ CORPORATION, 12 Plaintiffs, 13 MOTION FOR RECONSIDERATION OF VS. 14 PREVIOUS ORDER PROHIBITING **DEFENDANT CYRUS MILANIAN** 15 CYRUS MILANIAN and THE NEW LAS FROM TESTIFYING AT TRIAL VEGAS DEVELOPMENT COMPANY, LLC, 16 Defendants. 17 18 19 Pursuant to Rule 60 of the Fed.R.Civ.P., Defendant Cyrus Milanian ("Mr. Milanian"), by 20 and through his attorney, the Law Office of Gregory F. Buhyoff, respectfully moves the Court to 21 22 reconsider its recent order prohibiting Mr. Milanian from offering testimony at trial in the above-23 referenced matter. The Motion is based on the Points and Authorities set forth below, and the 24 Declaration of Cyrus Milanian attached hereto. 25 26 1111 27 1111 28 1111

I. RULE 60 OF THE FED. R. CIV. P. MAY BE THE BASIS FOR ASKING THE COURT TO RECONSIDER IT PREVIOUS ORDER PROHIBITING DEFENDANT MILANIAN FROM TESTIFYING AT TRIAL.

Rule 60 (b) of the Fed. R. Civ. P. states in pertinent part:

"Mistakes; Inadvertence, Excusable Neglect; Newly Discovered Evdience; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which due diligence could not have discovered in time to move for a new trial under Rule 59(b)... (6) any other reason justifying relief from the operation of the judgment."

Courts have held that the foregoing rule relating to relief from final judgment order or ruling can be used as a vehicle for motion for reconsideration. New York News Inc. v. Newspaper and Mail Deliverers' Union of New York (S.D.N.Y. 1991), 130 F.R.D. 294; Harold R. Sherrell, et. al. v. Fleet Bank of New York, et.. al, 1997 U.S. LEXIS 1520.

In this case, the Court refused to accept a January 14, 2003 letter from Mr. Milanian's physician, Dr. Robert W. Brenner, Director of Mountainside Family Practice Associates, as a basis for excusing Mr. Milanian's absence from his deposition the previous day. That letter attested to the fact that Mr. Milanian was suffering from "severe generalized anxiety, panic attacks and depression" and, therefore, was "not able to withstand the stress of a deposition at this time." [See Declaration of Cyrus Milanian ("Milanian Dec."), attached hereto, Annex 1.] Due to the haste with which Plaintiff's counsel sought a hearing sanctioning Mr. Milanian for missing his deposition, Plaintiff was unable to present an additional letter dated January 13, 2003 (the date of the deposition) from Dr. Brenner, which referred to the same condition. In addition, it has just been learned that Mr. Milanian's father was in the hospital on January 13, 2003, suffering from a serious condition that resulted in his death on Saturday, January 18, 2002. [Milanian Dec. ¶ 4]

Under Rule 60, the "standard for granting a motion for reconsideration is strict in order to avoid repetitive arguments on issues that have already been fully considered by the Court." *New York*

News, Inc. v. Newspaper and Mail Deliverers' Union of New York, 139 F.R.D. 294-295 (1991). The instant Motion involves no "repetitive arguments", but is based on information that the Court was unable to fully consider at the time it ruled that Mr. Milanian would be prohibited from testifying at trial circumstances. Given his own condition, the condition of his now-deceased father, and the speed with which proceedings were moving, it is understandable and excusable that this information is now being presented several days after the sanction against Mr. Milanian was issued. Accordingly, the Court should take this new information into account in reconsidering its previous order sanctioning Mr. Milanian.

II. Conclusion

Based on the foregoing, Defendant Cyrus Milanian respectfully requests that the Court vacate its previous order prohibiting him from testifying at trial.

Respectfully submitted this 21st day of January, 2003.

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7	UNITED STATES DISTRICT COURT	
8	DISTRICT OF NEVADA	
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10	CAESARS WORLD, INC. and PARK PLACE ENTERTAINMENT))
11	CORPORATION,	Case No. CV-S-02-1287-RLH-RJJ
12	Plaintiffs,	AFFIDAVIT OF CYRUS
13	,	MILANIAN IN SUPPORT OF MOTION FOR
14	VS.	RECONSIDERATION OF THE COURT'S PREVIOUS ORDER
15	CYRUS MILANIAN and THE NEW LAS VEGAS DEVELOPMENT COMPANY, LLC,	PROHIBITING DEFENDANT
16	Defendants.	TESTIFYING AT TRIAL
17	Detendants.)
18 19		
20	Cyrus Milanian, being first duly sworn, deposes and, under penalty of perjury, avers as follows:	
21		
22	1. I am a resident of the State of New Jersey, and am over 18 years of age. This affidavit is based	
23	on my personal knowledge.	
24	2. This affidavit is made in support of the above-referenced motion.	
25		
26	3. Attached hereto as Exhibit 1 are true and correct copies of two letters from Dr. Robert W.	
27	Brenner, MD, Director of the Mountainside Family Practice Clinic in Verona, New Jersey. These	
28	letters attest to the fact that I have been under Dr. Brenner's care for severe generalized anxiety, panic	
i		_

attacks and depression and that, in Dr. Brenner's opinion, I was unable to withstand the stress of a deposition at the time in question.

- Several days prior January 13, 2003, the date on which I was to be deposed by Plaintiffs' 4. counsel in the above-referenced case, my father was hospitalized for a condition that ultimately resulted in his death on January 18, 2003.
- 5. As a result of my father's condition, my own condition, and the circumstances surrounding the above-referenced lawsuit, it has been difficult for me to function as effectively as I normally do.

Further affiant sayeth naught.

Cyrus Milanian

Sworn before me on this

day of January 2003.

Ex.1

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January 14, 2003

Stephen W. Feingold Pitney, Hardin, Kipp & Szuch LLP 635 Third Avenue New York, NY 10017-4024

Re: Deposition of Cyrus Milanian Case # CV-S-02-1287-RLH-RJI

Dear Mr. Feingold:

I am writing this letter on behalf of my patient Cyrus Milanian. Mr. Milanian is under my care for the treatment of severe generalized anxiety, panic attacks, and depression. I understand that Mr. Milanian was scheduled to give a deposition in your office on January 13, 2003. It is my opinion that given Mr. Milanian's physical condition, the stress of a deposition could result in a significant aggravation of his existing condition. Accordingly, it is my opinion that Mr. Milanian is not able to withstand the stress that would be caused by a deposition at this time.

Sincerely,

Robert W. Brenner, MD

Director



MEPA

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Mountainside Family
Practice Associates

January 13, 2003

Honorable Roger L. Hunt United States District Court District of Nevada

Dear Sir,

I am writing this letter to further explain and support my patients desire to postpone his current hearing (case # CV-S-1287-RLH-RJJ).

Currently he is under my care for the treatment of generalized anxiety panic attacks and depression. It is my opinion that these conditions are related to his current stressors and that it would be quite difficult for him to appear in court at this time.

Sincerely yours,

Robert W. Brenner, MD

Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered on this 21st day of January, 2003, to:

Stephen W. Feingold Richard H. Brown PITNEY, HARDIN, KIPP & SZUCH, LLP 685 Third Avenue New York, New York 10017-4024 Phone: (212)297-5800

Gary R. Goodheart, Esq. Nevada Bar #1203 JONES VARGAS 3773 Howard Hughes Parkway Third Floor South Las Vegas, Nevada 89109 Phone: (702)862-3300 Fax: (702)737-7705

Gregory F. Buhyon